



March 29, 2005

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## ENGROSSED SENATE BILL No. 379

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DIGEST OF SB 379 (Updated March 24, 2005 1:46 pm - DI 84)

**Citations Affected:** IC 24-3; IC 24-4; IC 34-24; noncode.

**Synopsis:** Delivery sales of tobacco products. Prohibits the shipping of cigarettes other than cigars to an Indiana resident who is not a tobacco products distributor. Provides that the prohibition does not apply to cigarette manufacturers that meet certain requirements. Repeals statutes governing delivery sales of cigarettes. Provides that a merchant may make a drop shipment of tobacco products through a distributor. Requires cigarette importers and manufacturers to obtain licenses from the alcohol and tobacco commission. Specifies to and from whom distributors, importers, manufacturers, and retailers may sell and receive cigarettes. Requires importers and manufacturers to maintain documentation concerning certain cigarette transactions. Imposes a monetary penalty for violations. Provides for public and private rights of action. Makes technical corrections. Adds cigarettes and other tobacco products to items that may not be offered for sale at flea markets. Adds pipe tobacco to the items excluded from the definition of "tobacco product". Provides that a merchant may not mail cigarettes to an Indiana resident or retailer that is not a distributor.

**Effective:** July 1, 2005.

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### Weatherwax, Howard

(HOUSE SPONSORS — CHERRY, CRAWFORD)

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January 11, 2005, read first time and referred to Committee on Commerce and Transportation.

February 10, 2005, amended, reported favorably — Do Pass.

February 14, 2005, read second time, ordered engrossed.

February 15, 2005, engrossed. Read third time, passed. Yeas 48, nays 0.

#### HOUSE ACTION

March 14, 2005, read first time and referred to Committee on Public Policy and Veterans Affairs.

March 28, 2005, amended, reported — Do Pass.

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ES 379—LS 6911/DI 103+



March 29, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 379

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 24-3-5-0.1 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2005]: **Sec. 0.1. As used in this chapter, "cigarette" has the**  
4 **meaning set forth in IC 6-7-1-2.**

5 SECTION 2. IC 24-3-5-0.2 IS ADDED TO THE INDIANA CODE  
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
7 1, 2005]: **Sec. 0.2. As used in this chapter, "cigarette**  
8 **manufacturer" means a person or an entity that does the**  
9 **following:**

10 (1) **Manufactures cigarettes.**

11 (2) **Does one (1) of the following:**

12 (A) **Participates in the Master Settlement Agreement (as**  
13 **defined in IC 24-3-3-6) and performs the person's or**  
14 **entity's financial obligations under the Master Settlement**  
15 **Agreement.**

16 (B) **Places the applicable amount into a qualified escrow**  
17 **fund (as defined in IC 24-3-3-7).**

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**(3) Pays all applicable taxes under IC 6-7-1.**

SECTION 3. IC 24-3-5-0.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.3. As used in this chapter, "commission" refers to the alcohol and tobacco commission created by IC 7.1-2-1-1.**

SECTION 4. IC 24-3-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter, "delivery sale" means a transaction for the purchase of tobacco products in which an offer to purchase tobacco products is made:

- (1) electronically using a computer network (as defined in IC 35-43-2-3);
- (2) by mail; or
- (3) by telephone;

and acceptance of the offer results in delivery of the tobacco products to a named individual **or entity** at a designated address.

SECTION 5. IC 24-3-5-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.5. As used in this chapter, "distributor" includes the following:**

- (1) A distributor as defined in IC 6-7-1-6.**
- (2) A distributor as defined in IC 6-7-2-2.**

SECTION 6. IC 24-3-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this chapter, "merchant" means a person or an entity that engages in the selling of tobacco products by delivery sale. **The term does not include a cigarette manufacturer.**

SECTION 7. IC 24-3-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. As used in this chapter, "tobacco product" has the meaning set forth in IC 7.1-6-1-3. **However, the term does not include a cigar or pipe tobacco.**

SECTION 8. IC 24-3-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. **(a) A merchant cigarette manufacturer may not mail or ship ~~tobacco products~~ cigarettes as part of a delivery sale unless, before mailing or shipping the ~~tobacco products~~, cigarettes, the merchant: cigarette manufacturer:**

- (1) obtains from the prospective customer a written statement signed by the prospective customer under penalty of perjury:
  - (A) providing the prospective customer's address and date of birth;
  - (B) advising the prospective customer that:
    - (i) signing another person's name to the statement required under this subdivision may subject the person to a civil

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monetary penalty of not more than one thousand dollars (\$1,000); and

(ii) purchasing ~~tobacco products~~ **cigarettes** by a person less than eighteen (18) years of age is a Class C infraction under IC 35-46-1-10.5;

(C) confirming that the ~~tobacco product~~ **cigarette** order was placed by the prospective customer;

(D) providing a warning under 15 U.S.C. 1333(a)(1); and

(E) stating the sale of ~~tobacco products~~ **cigarettes** by delivery sale is a taxable event for purposes of IC 6-7-1; ~~and IC 6-7-2;~~

(2) makes a good faith effort to verify the information in the written statement obtained under subdivision (1) by using a federal or commercially available data base; and

(3) receives payment for the delivery sale by a credit or debit card issued in the name of the prospective purchaser.

SECTION 9. IC 24-3-5-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4.5. (a) Except as provided in subsection (c), a merchant may not mail or ship cigarettes as part of a delivery sale to an Indiana resident or retailer (as defined in IC 24-3-2-2(d)) that is not a distributor.**

**(b) If the commission determines that a merchant has violated subsection (a):**

**(1) a distributor may not accept a shipment of cigarettes from the merchant for a period, not to exceed one (1) year, determined by the commission; and**

**(2) the commission may impose a civil penalty, not to exceed five thousand dollars (\$5,000), on the merchant for each violation of subsection (a), as determined by the commission.**

**(c) A merchant may make a drop shipment of tobacco products to an Indiana resident or retailer that is billed through a distributor.**

SECTION 10. IC 24-3-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5. (a) A merchant cigarette manufacturer who mails or ships tobacco products cigarettes as part of a delivery sale shall:**

**(1) use a mailing or shipping service that requires the customer or a person at least eighteen (18) years of age who is designated by the customer to:**

**(A) sign to accept delivery of the ~~tobacco products;~~ cigarettes;**

**and**

**(B) present a valid operator's license issued under IC 9-24-3 or**

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an identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the delivery agent or employee of the mailing or shipping service, appears to be less than twenty-seven (27) years of age;

(2) provide to the mailing or shipping service used under subdivision (1) proof of compliance with section 6(a) of this chapter; and

(3) include the following statement in bold type or capital letters on an invoice or shipping document:

INDIANA LAW PROHIBITS THE MAILING OR SHIPPING  
OF ~~TOBACCO PRODUCTS~~ **CIGARETTES** TO A PERSON  
LESS THAN EIGHTEEN (18) YEARS OF AGE AND  
REQUIRES PAYMENT OF ALL APPLICABLE TAXES.

(b) The ~~alcohol and tobacco~~ commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if a mailing or shipping service:

- (1) delivers ~~tobacco products~~ **cigarettes** as part of a delivery sale without first receiving proof from the ~~merchant~~ **cigarette manufacturer** of compliance with section 6(a) of this chapter; or
- (2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).

The ~~alcohol and tobacco~~ commission shall deposit amounts collected under this subsection into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

(c) The following apply to a ~~merchant~~ **cigarette manufacturer** that mails or ships ~~tobacco products~~ **cigarettes** as part of a delivery sale without using a third party service as required by subsection (a)(1):

- (1) The ~~merchant~~ **cigarette manufacturer** shall require the customer or a person at least eighteen (18) years of age who is designated by the customer to:

- (A) sign to accept delivery of the ~~tobacco products~~; **cigarettes**;
- and

- (B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the ~~merchant~~ **cigarette manufacturer** or the ~~merchant's~~ **cigarette manufacturer's** employee making the delivery, appears to be less than twenty-seven (27) years of age.

- (2) The ~~alcohol and tobacco~~ commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if the ~~merchant~~ **cigarette manufacturer**:

- (A) delivers the ~~tobacco products~~ **cigarettes** without first

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1 complying with section 6(a) of this chapter; or  
 2 (B) fails to obtain a signature and proof of identification of the  
 3 customer or the customer's designee under subdivision (1).

4 The ~~alcohol and tobacco~~ commission shall deposit amounts  
 5 collected under this subdivision into the youth tobacco education  
 6 and enforcement fund established by IC 7.1-6-2-6.

7 SECTION 11. IC 24-3-5-6 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A ~~merchant~~  
 9 **cigarette manufacturer** shall, before mailing or shipping ~~tobacco~~  
 10 **products cigarettes** as part of a delivery sale, provide the department  
 11 of state revenue with a written statement containing the ~~merchant's~~  
 12 **cigarette manufacturer's** name, address, principal place of business,  
 13 and each place of business in Indiana.

14 (b) A ~~merchant cigarette manufacturer~~ who mails or ships ~~tobacco~~  
 15 **products cigarettes** as part of a delivery sale shall, not later than the  
 16 tenth day of the calendar month immediately following the month in  
 17 which the delivery sale occurred, file with the department of state  
 18 revenue a copy of the invoice for each delivery sale to a customer in  
 19 Indiana. The invoice must include the following information:

- 20 (1) The name and address of the customer to whom the ~~tobacco~~  
 21 **products cigarettes** were delivered.  
 22 (2) The brand name of the ~~tobacco products cigarettes~~ that were  
 23 delivered to the customer.  
 24 (3) The quantity of ~~tobacco products cigarettes~~ that were  
 25 delivered to the customer.

26 (c) A ~~merchant cigarette manufacturer~~ who complies with 15  
 27 U.S.C. 376 for the delivery sale of cigarettes is considered to satisfy the  
 28 requirements of this section.

29 SECTION 12. IC 24-3-5-7 IS AMENDED TO READ AS  
 30 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) A ~~merchant~~  
 31 **cigarette manufacturer** who delivers ~~tobacco products cigarettes~~ to  
 32 a customer as part of a delivery sale shall:

- 33 (1) collect and pay all applicable taxes under IC 6-7-1; ~~and~~  
 34 ~~IC 6-7-2~~; or  
 35 (2) place a legible and conspicuous notice on the outside of the  
 36 container in which the ~~tobacco products cigarettes~~ are shipped.  
 37 The notice shall be placed on the same side of the container as the  
 38 address to which the container is shipped and must state the  
 39 following:  
 40 "If these ~~tobacco products cigarettes~~ have been shipped to you  
 41 from a ~~merchant cigarette manufacturer~~ located outside the  
 42 state in which you reside, the ~~merchant cigarette~~

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**manufacturer** has under federal law reported information about the sale of these ~~tobacco products~~, **cigarettes**, including your name and address, to your state tax collection agency. You are legally responsible for all applicable unpaid state taxes on these ~~tobacco products~~. **cigarettes**."

(b) For a violation of this section the ~~alcohol and tobacco~~ commission may impose, in addition to any other remedies, civil penalties as follows:

(1) If the person has one (1) judgment for a violation of this section committed during a five (5) year period, a civil penalty of at least one thousand dollars (\$1,000) but not more than two thousand dollars (\$2,000).

(2) If the person has two (2) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least two thousand five hundred dollars (\$2,500) but not more than three thousand five hundred dollars (\$3,500).

(3) If the person has three (3) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least four thousand dollars (\$4,000) but not more than five thousand dollars (\$5,000).

(4) If the person has four (4) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least five thousand five hundred dollars (\$5,500) but not more than six thousand five hundred dollars (\$6,500).

(5) If the person has at least five (5) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of ten thousand dollars (\$10,000).

SECTION 13. IC 24-3-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. The ~~alcohol and tobacco~~ commission may impose a civil penalty of not more one thousand dollars (\$1,000) on a:

(1) customer who signs another person's name to a statement required under ~~section 4(1)~~ **section 4(a)(1)** of this chapter; or

(2) ~~merchant cigarette manufacturer~~ who sells ~~tobacco products~~ **cigarettes** by delivery sale to a person less than eighteen (18) years of age.

The ~~alcohol and tobacco~~ commission shall deposit amounts collected under this section into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

SECTION 14. IC 24-3-6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

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**Chapter 6. Contraband Cigarettes**

**Sec. 1.** As used in this chapter, "commission" refers to the alcohol and tobacco commission created by IC 7.1-2-1-1.

**Sec. 2.** As used in this chapter, "distributor" means a distributor (as defined in IC 6-7-1-6) that holds a registration certificate issued under IC 6-7-1-16.

**Sec. 3.** As used in this chapter, "importer" means a person that brings cigarettes into the United States for sale or distribution.

**Sec. 4.** As used in this chapter, "licensed" means holding a license issued under section 9 of this chapter.

**Sec. 5.** As used in this chapter, "manufacturer" means a person that manufactures or otherwise produces cigarettes to be sold in the United States.

**Sec. 6.** As used in this chapter, "person" has the meaning set forth in IC 6-7-1-4.

**Sec. 7.** As used in this chapter, "retailer" means a person that sells cigarettes to a consumer. The term includes a distributor.

**Sec. 8.** As used in this chapter, "stamp" has the meaning set forth in IC 6-7-1-9.

**Sec. 9. (a)** The commission may issue or renew a license to the following applicants:

(1) An importer.

(2) A manufacturer.

The commission shall prescribe the form of an application.

(b) An importer or manufacturer that conducts business in Indiana must apply under this section for a license for the importer's or manufacturer's principal place of business. An importer or manufacturer that is issued a license shall display the license at the importer's or manufacturer's principal place of business.

(c) The commission shall prescribe the form and duration of a license issued under this section. However, a license may not be valid for more than three (3) years from the date of issuance.

(d) A license issued under this section is nontransferable.

(e) The commission shall impose a fee of five hundred dollars (\$500) to issue or renew a license issued under this section.

(f) The commission shall not issue or renew a license under this section if:

(1) the applicant owes at least five hundred dollars (\$500) in taxes imposed under IC 6-7-1-12;

(2) the commission revoked the applicant's license within two (2) years before the application;

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(3) the applicant commits an offense under IC 6-7-1-21;

(4) the applicant does not comply with IC 24-3-3-12; or

(5) the applicant violates IC 24-3-4.

(g) The commission may revoke or suspend a license issued under this section if the applicant:

(1) is not eligible to receive or renew a license under subsection (f); or

(2) violates this chapter.

Sec. 10. (a) A distributor may apply a stamp only to cigarettes that are received from a licensed importer or licensed manufacturer.

(b) A distributor shall store stamped and unstamped cigarettes separately.

(c) A distributor may transfer unstamped cigarettes only as provided in IC 6-7-1-18.

Sec. 11. (a) A manufacturer or an importer may sell cigarettes in Indiana only to a distributor or a licensed importer.

(b) A manufacturer that sells cigarettes to a licensed importer under subsection (a) must be a licensed manufacturer.

(c) A distributor may sell cigarettes only to a distributor or a retailer.

(d) A distributor may obtain cigarettes only from another distributor, a licensed importer, or a licensed manufacturer.

(e) A retailer may obtain cigarettes only from a distributor.

Sec. 12. (a) This section does not apply to a distributor who:

(1) is a licensed manufacturer; and

(2) complies with section 13 of this chapter.

(b) A distributor shall report the following information for each place of business belonging to the distributor to the office of the attorney general not later than the fifteenth day of each month:

(1) The number and brand of cigarettes:

(A) distributed;

(B) shipped into Indiana; or

(C) shipped within Indiana;

during the immediately preceding month.

(2) The name and address of each person to which cigarettes described in subdivision (1) were distributed or shipped.

Sec. 13. (a) An importer or a manufacturer shall maintain documentation for each place of business belonging to the importer or manufacturer for each transaction other than a retail transaction with a consumer involving the sale, purchase, transfer, consignment, or receipt of cigarettes. The documentation must

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1 include:

2 (1) the name and address of the parties to the transaction; and

3 (2) the quantity by brand style of cigarettes involved in the  
4 transaction.

5 (b) Subject to subsection (c), an importer or a manufacturer  
6 shall preserve documentation described in subsection (a) at the  
7 place of business at which each transaction occurs.

8 (c) The commission may allow an importer or a manufacturer  
9 with multiple places of business to preserve documentation  
10 described in subsection (a) at a centralized location. However, the  
11 importer or manufacturer shall provide duplicate documentation  
12 at each place of business upon request by the commission.

13 (d) An importer or a manufacturer shall maintain  
14 documentation under this section for five (5) years from the date  
15 of the transaction.

16 (e) The commission may:

17 (1) obtain access to; and

18 (2) inspect at reasonable times;

19 the documentation maintained under this section. The commission  
20 may share the documentation with other law enforcement officials.

21 Sec. 14. (a) The commission may enter and inspect, without a  
22 warrant during normal business hours or with a warrant during  
23 nonbusiness hours, the facilities and records of an importer or a  
24 manufacturer.

25 (b) If the commission or a law enforcement officer has  
26 knowledge or reasonable grounds to believe that a vehicle is  
27 transporting cigarettes in violation of this chapter, the commission  
28 or the law enforcement officer may stop and inspect the vehicle for  
29 cigarettes being transported in violation of this chapter.

30 Sec. 15. (a) A person who violates this chapter is liable for a civil  
31 penalty equal to the greater of:

32 (1) five (5) times the value of the cigarettes involved in the  
33 violation; or

34 (2) one thousand dollars (\$1,000).

35 (b) A civil penalty under this section is in addition to any other  
36 penalty imposed.

37 Sec. 16. (a) Either or both of the following may bring an action  
38 to prevent or restrain violations of this chapter:

39 (1) The attorney general or the attorney general's designee.

40 (2) A person that holds a valid permit under 26 U.S.C. 5712.

41 (b) A person that brings an action under subsection (a) shall  
42 provide notice to the attorney general of the commencement of the

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1 **action.**

2 SECTION 15. IC 24-4-12-8 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) This section does  
4 not apply to a person who keeps available for public inspection a  
5 written authorization identifying that person as an authorized  
6 representative of the manufacturer or distributor of a product listed in  
7 subsection (b), if the authorization is not false, fraudulent, or  
8 fraudulently obtained.

9 (b) An unused property merchant may not offer at an unused  
10 property market for sale, or knowingly permit the sale of, baby food,  
11 infant formula, cosmetics, personal care products, nonprescription  
12 drugs, ~~or~~ medical devices, **or cigarettes or other tobacco products.**

13 SECTION 16. IC 34-24-1-1 IS AMENDED TO READ AS  
14 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The following  
15 may be seized:

16 (1) All vehicles (as defined by IC 35-41-1), if they are used or are  
17 intended for use by the person or persons in possession of them to  
18 transport or in any manner to facilitate the transportation of the  
19 following:

20 (A) A controlled substance for the purpose of committing,  
21 attempting to commit, or conspiring to commit any of the  
22 following:

23 (i) Dealing in or manufacturing cocaine, a narcotic drug, or  
24 methamphetamine (IC 35-48-4-1).

25 (ii) Dealing in a schedule I, II, or III controlled substance  
26 (IC 35-48-4-2).

27 (iii) Dealing in a schedule IV controlled substance  
28 (IC 35-48-4-3).

29 (iv) Dealing in a schedule V controlled substance  
30 (IC 35-48-4-4).

31 (v) Dealing in a counterfeit substance (IC 35-48-4-5).

32 (vi) Possession of cocaine, a narcotic drug, or  
33 methamphetamine (IC 35-48-4-6).

34 (vii) Dealing in paraphernalia (IC 35-48-4-8.5).

35 (viii) Dealing in marijuana, hash oil, or hashish  
36 (IC 35-48-4-10).

37 (B) Any stolen (IC 35-43-4-2) or converted property  
38 (IC 35-43-4-3) if the retail or repurchase value of that property  
39 is one hundred dollars (\$100) or more.

40 (C) Any hazardous waste in violation of IC 13-30-6-6.

41 (D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass  
42 destruction (as defined in IC 35-41-1-29.4) used to commit,

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- 1 used in an attempt to commit, or used in a conspiracy to  
 2 commit an offense under IC 35-47 as part of or in furtherance  
 3 of an act of terrorism (as defined by IC 35-41-1-26.5).  
 4 (2) All money, negotiable instruments, securities, weapons,  
 5 communications devices, or any property used to commit, used in  
 6 an attempt to commit, or used in a conspiracy to commit an  
 7 offense under IC 35-47 as part of or in furtherance of an act of  
 8 terrorism or commonly used as consideration for a violation of  
 9 IC 35-48-4 (other than items subject to forfeiture under  
 10 IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):  
 11 (A) furnished or intended to be furnished by any person in  
 12 exchange for an act that is in violation of a criminal statute;  
 13 (B) used to facilitate any violation of a criminal statute; or  
 14 (C) traceable as proceeds of the violation of a criminal statute.  
 15 (3) Any portion of real or personal property purchased with  
 16 money that is traceable as a proceed of a violation of a criminal  
 17 statute.  
 18 (4) A vehicle that is used by a person to:  
 19 (A) commit, attempt to commit, or conspire to commit;  
 20 (B) facilitate the commission of; or  
 21 (C) escape from the commission of;  
 22 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal  
 23 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting  
 24 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense  
 25 under IC 35-47 as part of or in furtherance of an act of terrorism.  
 26 (5) Real property owned by a person who uses it to commit any of  
 27 the following as a Class A felony, a Class B felony, or a Class C  
 28 felony:  
 29 (A) Dealing in or manufacturing cocaine, a narcotic drug, or  
 30 methamphetamine (IC 35-48-4-1).  
 31 (B) Dealing in a schedule I, II, or III controlled substance  
 32 (IC 35-48-4-2).  
 33 (C) Dealing in a schedule IV controlled substance  
 34 (IC 35-48-4-3).  
 35 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).  
 36 (6) Equipment and recordings used by a person to commit fraud  
 37 under IC 35-43-5-4(11).  
 38 (7) Recordings sold, rented, transported, or possessed by a person  
 39 in violation of IC 24-4-10.  
 40 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as  
 41 defined by IC 35-45-6-1) that is the object of a corrupt business  
 42 influence violation (IC 35-45-6-2).

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(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

~~(12) Cigarettes that are sold in violation of IC 24-3-5.2; cigarettes that a person attempts to sell in violation of IC 24-3-5.2; and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.2.~~

~~(13)~~ (12) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine).

(2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

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1 (5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or  
2 methamphetamine) as a Class A felony, Class B felony, or Class  
3 C felony.

4 (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as  
5 a Class C felony.

6 SECTION 17. [EFFECTIVE JULY 1, 2005] **Notwithstanding**  
7 **IC 24-3-6-12(b)(2), as added by this act, a distributor (as defined in**  
8 **IC 24-3-6-2, as added by this act) is not required to report the**  
9 **information required in IC 24-3-6-12(b)(2), as added by this act,**  
10 **until the later of the following:**

11 (1) **When the attorney general becomes capable of receiving**  
12 **the information reported in an electronic format.**

13 (2) **July 1, 2008.**

14 SECTION 18. IC 24-3-5.2 IS REPEALED [EFFECTIVE JULY 1,  
15 2005].

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## COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Transportation, to which was referred Senate Bill No. 379, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 24-3-5-0.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.1. As used in this chapter, "cigarette" has the meaning set forth in IC 6-7-1-2.**

SECTION 2. IC 24-3-5-0.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.2. As used in this chapter, "cigarette manufacturer" means a person or an entity that does the following:**

- (1) Manufactures cigarettes.**
- (2) Does one (1) of the following:**
  - (A) Participates in the Master Settlement Agreement (as defined in IC 24-3-3-6) and performs the person's or entity's financial obligations under the Master Settlement Agreement.**
  - (B) Places the applicable amount into a qualified escrow fund (as defined in IC 24-3-3-7).**
- (3) Pays all applicable taxes under IC 6-7-1."**

Page 2, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 6. IC 24-3-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2. As used in this chapter, "merchant" means a person or an entity that engages in the selling of tobacco products by delivery sale. The term does not include a cigarette manufacturer.**

SECTION 7. IC 24-3-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 3. As used in this chapter, "tobacco product" has the meaning set forth in IC 7.1-6-1-3. However, the term does not include a cigar."**

Page 2, line 5, strike "merchant" and insert "**cigarette manufacturer**".

Page 2, line 6, strike "tobacco products" and insert "**cigarettes**".

Page 2, line 6, reset in roman "unless, before mailing".

Page 2, line 7, reset in roman "or shipping the".

Page 2, line 7, after "products," insert "**cigarettes,**".

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Page 2, line 7, reset in roman "the".  
 Page 2, line 7, after "merchant:" insert "**cigarette manufacturer:**".  
 Page 2, reset in roman lines 8 through 16.  
 Page 2, line 17, reset in roman "(ii) purchasing".  
 Page 2, line 17, after "products" insert "**cigarettes**".  
 Page 2, line 17, reset in roman "by a person less than".  
 Page 2, reset in roman lines 18 through 19.  
 Page 2, line 20, reset in roman "(C) confirming that the".  
 Page 2, line 20, after "product" insert "**cigarette**".  
 Page 2, line 20, reset in roman "order was placed by".  
 Page 2, reset in roman lines 21 through 22.  
 Page 2, line 23, reset in roman "(E) stating the sale of".  
 Page 2, line 23, after "products" insert "**cigarettes**".  
 Page 2, line 23, reset in roman "by delivery sale is a".  
 Page 2, line 24, reset in roman "taxable event for purposes of  
 IC 6-7-1".  
 Page 2, line 24, after "IC 6-7-1" insert ";".  
 Page 2, reset in roman lines 25 through 29.  
 Page 2, line 30, before "to" begin a new paragraph and insert:  
 "SECTION 9. IC 24-3-5-4.5 IS ADDED TO THE INDIANA CODE  
 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 1, 2005]: **Sec. 4.5. (a) A merchant may not mail or ship tobacco  
 products as part of a delivery sale**".  
 Page 2, between lines 39 and 40, begin a new paragraph and insert:  
 "SECTION 10. IC 24-3-5-5 IS AMENDED TO READ AS  
 FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5. (a) A merchant  
 cigarette manufacturer** who mails or ships ~~tobacco products~~  
**cigarettes** as part of a delivery sale shall:  
 (1) use a mailing or shipping service that requires the customer or  
 a person at least eighteen (18) years of age who is designated by  
 the customer to:  
 (A) sign to accept delivery of the ~~tobacco products~~; **cigarettes**;  
 and  
 (B) present a valid operator's license issued under IC 9-24-3 or  
 an identification card issued under IC 9-24-16 if the customer  
 or the customer's designee, in the opinion of the delivery agent  
 or employee of the mailing or shipping service, appears to be  
 less than twenty-seven (27) years of age;  
 (2) provide to the mailing or shipping service used under  
 subdivision (1) proof of compliance with section 6(a) of this  
 chapter; and  
 (3) include the following statement in bold type or capital letters

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on an invoice or shipping document:

INDIANA LAW PROHIBITS THE MAILING OR SHIPPING  
OF ~~TOBACCO PRODUCTS~~ **CIGARETTES** TO A PERSON  
LESS THAN EIGHTEEN (18) YEARS OF AGE AND  
REQUIRES PAYMENT OF ALL APPLICABLE TAXES.

(b) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if a mailing or shipping service:

- (1) delivers ~~tobacco products~~ **cigarettes** as part of a delivery sale without first receiving proof from the ~~merchant~~ **cigarette manufacturer** of compliance with section 6(a) of this chapter; or
- (2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).

The alcohol and tobacco commission shall deposit amounts collected under this subsection into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

(c) The following apply to a ~~merchant~~ **cigarette manufacturer** that mails or ships ~~tobacco products~~ **cigarettes** as part of a delivery sale without using a third party service as required by subsection (a)(1):

- (1) The ~~merchant~~ **cigarette manufacturer** shall require the customer or a person at least eighteen (18) years of age who is designated by the customer to:

- (A) sign to accept delivery of the ~~tobacco products;~~ **cigarettes;** and

- (B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the ~~merchant~~ **cigarette manufacturer** or the ~~merchant's~~ **cigarette manufacturer's** employee making the delivery, appears to be less than twenty-seven (27) years of age.

- (2) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if the ~~merchant;~~ **cigarette manufacturer:**

- (A) delivers the ~~tobacco products~~ **cigarettes** without first complying with section 6(a) of this chapter; or

- (B) fails to obtain a signature and proof of identification of the customer or the customer's designee under subdivision (1).

The alcohol and tobacco commission shall deposit amounts collected under this subdivision into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

SECTION 11. IC 24-3-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A ~~merchant~~

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**cigarette manufacturer** shall, before mailing or shipping ~~tobacco products~~ **cigarettes** as part of a delivery sale, provide the department of state revenue with a written statement containing the ~~merchant's~~ **cigarette manufacturer's** name, address, principal place of business, and each place of business in Indiana.

(b) A ~~merchant~~ **cigarette manufacturer** who mails or ships ~~tobacco products~~ **cigarettes** as part of a delivery sale shall, not later than the tenth day of the calendar month immediately following the month in which the delivery sale occurred, file with the department of state revenue a copy of the invoice for each delivery sale to a customer in Indiana. The invoice must include the following information:

- (1) The name and address of the customer to whom the ~~tobacco products~~ **cigarettes** were delivered.
- (2) The brand name of the ~~tobacco products~~ **cigarettes** that were delivered to the customer.
- (3) The quantity of ~~tobacco products~~ **cigarettes** that were delivered to the customer.

(c) A ~~merchant~~ **cigarette manufacturer** who complies with 15 U.S.C. 376 for the delivery sale of cigarettes is considered to satisfy the requirements of this section.

SECTION 12. IC 24-3-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) A ~~merchant~~ **cigarette manufacturer** who delivers ~~tobacco products~~ **cigarettes** to a customer as part of a delivery sale shall:

- (1) collect and pay all applicable taxes under IC 6-7-1; and ~~IC 6-7-2~~; or
- (2) place a legible and conspicuous notice on the outside of the container in which the ~~tobacco products~~ **cigarettes** are shipped. The notice shall be placed on the same side of the container as the address to which the container is shipped and must state the following:

"If these ~~tobacco products~~ **cigarettes** have been shipped to you from a ~~merchant~~ **cigarette manufacturer** located outside the state in which you reside, the ~~merchant~~ **cigarette manufacturer** has under federal law reported information about the sale of these ~~tobacco products~~ **cigarettes**, including your name and address, to your state tax collection agency. You are legally responsible for all applicable unpaid state taxes on these ~~tobacco products~~ **cigarettes**."

(b) For a violation of this section the alcohol and tobacco commission may impose, in addition to any other remedies, civil penalties as follows:

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(1) If the person has one (1) judgment for a violation of this section committed during a five (5) year period, a civil penalty of at least one thousand dollars (\$1,000) but not more than two thousand dollars (\$2,000).

(2) If the person has two (2) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least two thousand five hundred dollars (\$2,500) but not more than three thousand five hundred dollars (\$3,500).

(3) If the person has three (3) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least four thousand dollars (\$4,000) but not more than five thousand dollars (\$5,000).

(4) If the person has four (4) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least five thousand five hundred dollars (\$5,500) but not more than six thousand five hundred dollars (\$6,500).

(5) If the person has at least five (5) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of ten thousand dollars (\$10,000).

SECTION 13. IC 24-3-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. The alcohol and tobacco commission may impose a civil penalty of not more one thousand dollars (\$1,000) on a:

- (1) customer who signs another person's name to a statement required under ~~section 4(1)~~ **section 4(a)(1)** of this chapter; or
- (2) **merchant cigarette manufacturer** who sells **tobacco products cigarettes** by delivery sale to a person less than eighteen (18) years of age.

The alcohol and tobacco commission shall deposit amounts collected under this section into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6."

Page 5, delete lines 33 through 35, begin a new paragraph and insert:

"SECTION 15. IC 24-3-5.2 IS REPEALED [EFFECTIVE JULY 1, 2005]."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 379 as introduced.)

SERVER, Chairperson

Committee Vote: Yeas 10, Nays 0.

ES 379—LS 6911/DI 103+



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SENATE MOTION

Madam President: I move that Senator Howard be added as coauthor of Engrossed Senate Bill 379.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy and Veterans Affairs, to which was referred Senate Bill 379, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 30, after "cigar" insert "**or pipe tobacco**".

Page 3, line 18, delete "A" and insert "**Except as provided in subsection (c), a**".

Page 3, line 18, delete "tobacco" and insert "**cigarettes**".

Page 3, line 19, delete "products".

Page 3, line 23, delete "tobacco" and insert "**cigarettes**".

Page 3, line 24, delete "products".

Page 3, between lines 28 and 29, begin a new paragraph and insert: "**(c) A merchant may make a drop shipment of tobacco products to an Indiana resident or retailer that is billed through a distributor.**".

Page 4, line 10, strike "alcohol and tobacco".

Page 4, line 18, strike "alcohol and tobacco".

Page 4, line 35, strike "alcohol and tobacco".

Page 4, line 42, strike "alcohol and tobacco".

Page 6, line 2, strike "alcohol and tobacco".

Page 6, line 25, strike "alcohol and".

Page 6, line 26, strike "tobacco".

Page 6, line 33, strike "alcohol and tobacco".

Page 6, between lines 35 and 36, begin a new paragraph and insert: "**SECTION 14. IC 24-3-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:**

**Chapter 6. Contraband Cigarettes**

**Sec. 1.** As used in this chapter, "commission" refers to the alcohol and tobacco commission created by IC 7.1-2-1-1.

**Sec. 2.** As used in this chapter, "distributor" means a distributor (as defined in IC 6-7-1-6) that holds a registration certificate issued under IC 6-7-1-16.

**Sec. 3.** As used in this chapter, "importer" means a person that brings cigarettes into the United States for sale or distribution.

**Sec. 4.** As used in this chapter, "licensed" means holding a license issued under section 9 of this chapter.

**Sec. 5.** As used in this chapter, "manufacturer" means a person that manufactures or otherwise produces cigarettes to be sold in the United States.

**Sec. 6.** As used in this chapter, "person" has the meaning set



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forth in IC 6-7-1-4.

**Sec. 7.** As used in this chapter, "retailer" means a person that sells cigarettes to a consumer. The term includes a distributor.

**Sec. 8.** As used in this chapter, "stamp" has the meaning set forth in IC 6-7-1-9.

**Sec. 9. (a)** The commission may issue or renew a license to the following applicants:

- (1) An importer.
- (2) A manufacturer.

The commission shall prescribe the form of an application.

(b) An importer or manufacturer that conducts business in Indiana must apply under this section for a license for the importer's or manufacturer's principal place of business. An importer or manufacturer that is issued a license shall display the license at the importer's or manufacturer's principal place of business.

(c) The commission shall prescribe the form and duration of a license issued under this section. However, a license may not be valid for more than three (3) years from the date of issuance.

(d) A license issued under this section is nontransferable.

(e) The commission shall impose a fee of five hundred dollars (\$500) to issue or renew a license issued under this section.

(f) The commission shall not issue or renew a license under this section if:

- (1) the applicant owes at least five hundred dollars (\$500) in taxes imposed under IC 6-7-1-12;
- (2) the commission revoked the applicant's license within two (2) years before the application;
- (3) the applicant commits an offense under IC 6-7-1-21;
- (4) the applicant does not comply with IC 24-3-3-12; or
- (5) the applicant violates IC 24-3-4.

(g) The commission may revoke or suspend a license issued under this section if the applicant:

- (1) is not eligible to receive or renew a license under subsection (f); or
- (2) violates this chapter.

**Sec. 10. (a)** A distributor may apply a stamp only to cigarettes that are received from a licensed importer or licensed manufacturer.

(b) A distributor shall store stamped and unstamped cigarettes separately.

(c) A distributor may transfer unstamped cigarettes only as

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provided in IC 6-7-1-18.

**Sec. 11. (a) A manufacturer or an importer may sell cigarettes in Indiana only to a distributor or a licensed importer.**

**(b) A manufacturer that sells cigarettes to a licensed importer under subsection (a) must be a licensed manufacturer.**

**(c) A distributor may sell cigarettes only to a distributor or a retailer.**

**(d) A distributor may obtain cigarettes only from another distributor, a licensed importer, or a licensed manufacturer.**

**(e) A retailer may obtain cigarettes only from a distributor.**

**Sec. 12. (a) This section does not apply to a distributor who:**

**(1) is a licensed manufacturer; and**

**(2) complies with section 13 of this chapter.**

**(b) A distributor shall report the following information for each place of business belonging to the distributor to the office of the attorney general not later than the fifteenth day of each month:**

**(1) The number and brand of cigarettes:**

**(A) distributed;**

**(B) shipped into Indiana; or**

**(C) shipped within Indiana;**

**during the immediately preceding month.**

**(2) The name and address of each person to which cigarettes described in subdivision (1) were distributed or shipped.**

**Sec. 13. (a) An importer or a manufacturer shall maintain documentation for each place of business belonging to the importer or manufacturer for each transaction other than a retail transaction with a consumer involving the sale, purchase, transfer, consignment, or receipt of cigarettes. The documentation must include:**

**(1) the name and address of the parties to the transaction; and**

**(2) the quantity by brand style of cigarettes involved in the transaction.**

**(b) Subject to subsection (c), an importer or a manufacturer shall preserve documentation described in subsection (a) at the place of business at which each transaction occurs.**

**(c) The commission may allow an importer or a manufacturer with multiple places of business to preserve documentation described in subsection (a) at a centralized location. However, the importer or manufacturer shall provide duplicate documentation at each place of business upon request by the commission.**

**(d) An importer or a manufacturer shall maintain documentation under this section for five (5) years from the date**

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of the transaction.

(e) The commission may:

- (1) obtain access to; and
- (2) inspect at reasonable times;

the documentation maintained under this section. The commission may share the documentation with other law enforcement officials.

Sec. 14. (a) The commission may enter and inspect, without a warrant during normal business hours or with a warrant during nonbusiness hours, the facilities and records of an importer or a manufacturer.

(b) If the commission or a law enforcement officer has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this chapter, the commission or the law enforcement officer may stop and inspect the vehicle for cigarettes being transported in violation of this chapter.

Sec. 15. (a) A person who violates this chapter is liable for a civil penalty equal to the greater of:

- (1) five (5) times the value of the cigarettes involved in the violation; or
- (2) one thousand dollars (\$1,000).

(b) A civil penalty under this section is in addition to any other penalty imposed.

Sec. 16. (a) Either or both of the following may bring an action to prevent or restrain violations of this chapter:

- (1) The attorney general or the attorney general's designee.
- (2) A person that holds a valid permit under 26 U.S.C. 5712.

(b) A person that brings an action under subsection (a) shall provide notice to the attorney general of the commencement of the action.

SECTION 15. IC 24-4-12-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) This section does not apply to a person who keeps available for public inspection a written authorization identifying that person as an authorized representative of the manufacturer or distributor of a product listed in subsection (b), if the authorization is not false, fraudulent, or fraudulently obtained.

(b) An unused property merchant may not offer at an unused property market for sale, or knowingly permit the sale of, baby food, infant formula, cosmetics, personal care products, nonprescription drugs, or medical devices, or cigarettes or other tobacco products."

Page 9, between lines 28 and 29, begin a new paragraph and insert:

"SECTION 18. [EFFECTIVE JULY 1, 2005] **Notwithstanding**

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IC 24-3-6-12(b)(2), as added by this act, a distributor (as defined in IC 24-3-6-2, as added by this act) is not required to report the information required in IC 24-3-6-12(b)(2), as added by this act, until the later of the following:

(1) When the attorney general becomes capable of receiving the information reported in an electronic format.

(2) July 1, 2008."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 379 as printed February 11, 2005.)

ALDERMAN, Chair

Committee Vote: yeas 11, nays 0.

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